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June 17, 2014

PSC STAFF OPINION 2014-008

J. Christopher Hopgood, Esquire
Dorsey, Gray, Norment & Hopgood
318 Second Street
Henderson KY 42420

RE: Henderson County Water District Potential Fiscal Year-End Change

Dear Mr. Hopgood:

Commission Staff acknowledges receipt of your May 28, 2014 letter on behalf of Henderson County Water District ("HCWD") in which you request an opinion as to whether a change in HCWD's fiscal year requires the approval of the Public Service Commission ("Commission"). This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

Commission Staff understands the facts to be as follows: HCWD is a water district organized under KRS Chapter 74. HCWD currently has a fiscal year that ends on August 31. HCWD is considering adopting a calendar year as its fiscal year, but has not yet made the decision to implement the change. If a calendar year is adopted, HCWD proposes that it file two sets of annual reports with the Commission: one set of reports would be filed for the fiscal year from September 1, 2013 through August 31, 2014; another set of reports would be filed for the new, shortened fiscal year from September 1, 2014 – December 31, 2014.

Your letter presents the following issues:

1. Whether Commission approval is required to change the basis of HCWD's fiscal year from its current fiscal year-end of August 31, to a calendar year, with a fiscal year-end of December 31.
2. If HCWD changes its fiscal year, should HCWD file two sets of statutory and regulatory required reports covering the respective old and new fiscal years.

As to the first issue, Commission Staff is of the opinion that, other than general notice to the Commission of the change, HCWD is not required to obtain Commission approval prior to changing the basis of its fiscal year.

Commission Staff's opinion is based on KRS Chapters 74 and 278, which set forth the Commission's statutory jurisdiction over water districts, and 807 KAR Chapter 5, which sets forth the regulations promulgated under those statutes. A water district is a public utility and is subject to the jurisdiction of the Commission "to the same extent as any other utility."¹ The Commission has exclusive jurisdiction to regulate the rates and service of public utilities, to make investigations as to changes to the rates and service of public utilities,² and to require the filing of reports and other information.³

The statutes pertaining to water districts are silent regarding the basis for establishing a fiscal year. By way of example, KRS 74.050 and KRS 278.220 require water districts to maintain their financial records in accordance with a prescribed uniform system of accounts. The uniform system of accounts for water districts was established by the National Association of Regulatory Utility Commissioners and does not mandate the annual accounting period that must be used as the basis for a fiscal year. Additionally, certain financial reports filed with the Commission, such as the gross annual operating revenue report, are required to be calculated based upon the previous calendar year. However, there are not specific provisions in KRS Chapters 74 or 278 that mandate the annual accounting period that must be used as the basis for a water district's fiscal year, nor are there specific requirements that a water district obtain Commission approval in order to change the basis for a fiscal year.

Instead, selecting the basis for the fiscal year implicitly falls within the purview of a utility's authority to conduct its business. A water district's power to conduct its business is exercised by and under the authority of its board of commissioners, who are charged with management of the "affairs of the district" and may "do all acts necessary to carry on the work of the water district."⁴ The statutory powers and duties of the board of commissioners include adopting bylaws that contain provisions for the operation and management of the water district that are not inconsistent with statutes.⁵ Thus, absent a statute specifying otherwise, a water district's board of commissioners has the choice

¹ KRS 278.015.

² KRS 278.040.

³ KRS 278.230(3).

⁴ KRS 74.020(1); KRS 74.070(2)-(3).

⁵ KRS 74.070(4).

of basing its fiscal year on a calendar year or some other annual accounting period in conjunction with its authority to do all acts necessary to carry on its business.

Since a water district has the choice whether to base its fiscal year upon a calendar year or another annual accounting period and there are no statutory mandates, HCWD is not required to obtain Commission approval prior to changing the basis for its fiscal year. However, under the broad jurisdiction of the Commission and under the statutory requirement to file financial reports with the Commission, HCWD should provide the Commission with notice of the change in fiscal years.

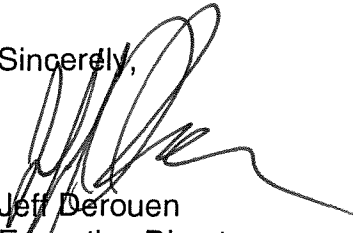
As for your second issue regarding filing two sets of reports, utilities are required by statutes and regulations to file gross annual operating revenue reports ("gross revenue report"), annual financial and statistical reports ("annual report"), and financial statement audit reports ("audit report"). KRS 278.140 requires that a utility file a gross revenue report, reporting receipts derived from intrastate business during the preceding calendar year. The annual report required by 807 KAR 5:006 §4(2) is also filed for the preceding calendar year according to the terms of the report itself and the affirmation that must be executed upon filing the report. Under 807 KAR 5:006 §4(3), if an audit is performed, then the audit report is filed for the "previous year." If no audit is performed, then the utility files a statement that no audit was performed.

Pursuant to its statutory and regulatory requirement, HCWD previously filed both its gross revenue reports and annual reports as required based upon the respective calendar years. HCWD previously filed its audit report based upon its chosen fiscal year-end of August 31. Should HCWD change its fiscal year, it must continue to file its statutory and regulatory reports on the same basis as it previously filed the reports. Thus, for the gross revenue report and the annual report there would be no change since those reports have always been filed on a calendar year basis. If an audit is performed, HCWD is required to file the audit report based upon the fiscal year covered by the audit. Thus, if a change in fiscal year results in HCWD having an audit report for the twelve months ended August 31, and a second audit report for the four months ended December 31, both audit reports must be filed with the Commission. Alternatively, if HCWD determines it is permissible, pursuant to accounting standards, to conduct only one financial audit covering a sixteen month period, from September 1, 2013 through December 31, 2014, then it would file that audit report with the Commission.

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Sincerely,



Jeff Derouen
Executive Director

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